

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 BRYCE BALLS,

14 Defendant.

CASE NO. CR14-0373JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is Defendant Bryce Balls' Federal Rule of Criminal Procedure  
17 41(g) motion for the return of property. (Mot. (Dkt. # 33).) Mr. Balls requests that  
18 Plaintiff United States of America ("the Government") return one pair of Thermal Eye  
19 250(D) Night Vision Goggles and one olive green tactical bag, which the Bureau of  
20 Alcohol, Tobacco, Firearms and Explosives ("ATF") seized during a search of his  
21 residence in 2014. (*Id.* at 1.)

22 //

1 Under controlling Ninth Circuit precedent, the court must construe Mr. Balls' Rule  
2 41(g) motion as a civil complaint because there are no criminal charges currently pending  
3 against him. (*See* Dkt.); *United States v. Ibrahim*, 522 F.3d 1003, 1007-08 (9th Cir.  
4 2008); *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). Accordingly, the  
5 Federal Rules of Civil Procedure apply to Mr. Balls' Rule 41(g) motion. *Ibrahim*, 522  
6 F.3d at 1007; *Ritchie*, 342 F.3d at 907. Moreover, under the same Ninth Circuit  
7 precedent, the court must construe the Government's response to Mr. Balls' motion as a  
8 motion to dismiss Mr. Balls' civil complaint. (*See* Resp. (Dkt. # 34)); *Ibrahim*, 522 F.3d  
9 at 1007. So construed, the court DENIES the Government's motion to dismiss and  
10 ORDERS the Government to show cause why it should not return Mr. Balls' property as  
11 discussed below.

## 12 II. BACKGROUND

13 This matter arises from an ATF search of Mr. Balls' residence on December 12,  
14 2014. (Mot. at 1.) The ATF was investigating Mr. Balls for theft of firearms from  
15 Quantico Tactical, a federal firearms licensee, in Lakewood, Washington. (Resp. at 1.)  
16 During the search, the ATF recovered firearms, ammunition, firearm scopes, and other  
17 items—including a pair of night vision goggles and an olive green tactical bag. (*Id.*; Mot.  
18 at 1.) On December 18, 2014, a federal grand jury indicted Mr. Balls on one count of  
19 felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). (Mot. at 2;  
20 Indictment (Dkt. # 3).) On April 23, 2015, the Government also charged Mr. Balls with  
21 one count of felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1).  
22 (Mot. at 2; Felony Information (Dkt. # 22).) On April 27, 2015, Mr. Balls pleaded guilty

1 and was sentenced to 42 months in prison. (Mot. at 2; Plea Agreement (Dkt. # 25).)

2 On February 7, 2017, Mr. Balls filed a motion seeking the return of the night  
3 vision goggles and the olive green tactical bag. (*See* Mot.) The Government responded  
4 to the motion on February 17, 2017, objecting to the release of the items. (Resp. at 2.)  
5 Mr. Balls replied on March 20, 2017. (Reply (Dkt. # 35).) The court now considers Mr.  
6 Balls' motion.

### 7 **III. ANALYSIS**

8 The court construes Mr. Balls' motion as a civil complaint and the Government's  
9 response as a motion to dismiss. *See Ibrahim*, 522 F.3d at 1007. To survive a motion to  
10 dismiss, a complainant must allege "sufficient factual matter, accepted as true, to 'state a  
11 claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
12 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In this case, Mr. Balls  
13 alleges that the Government retains possession of one pair of Thermal Eye 250D Night  
14 Vision Goggles and one olive green tactical bag. (Mot. at 1; *see also id.* Ex. A.)  
15 Moreover, Mr. Balls alleges that those items should be returned because they are not  
16 needed for evidence. (*See generally* Mot.)

17 The Government does not refute Mr. Balls' allegation that it retains possession of  
18 the property at issue but objects to the release of the items. (*See* Resp. at 2.) The  
19 Government fails, however, to provide a legitimate reason for retaining the property at  
20 issue. In its response, the Government states, without citation to any evidence, that Mr.  
21 Balls must "prove he legitimately owned/possessed these items" because "most of the  
22 items recovered from [Mr. Balls'] residence were stolen and it appeared he was stealing

1 many items and selling them.” (*Id.*) The Government admits, though, that the “night  
2 vision goggles [sic] were not taken from Quantico Tactical and due to the lack of tags it  
3 is difficult to determine the source of the bag.” (*Id.*)

4 In its response, the Government misstates the burden of proof. (*See generally*  
5 Resp.) Under Rule 41(g), when the property in question is “no longer needed for  
6 evidentiary purposes, either because trial is complete, the defendant has pleaded guilty,  
7 or . . . the government has abandoned its investigation,” the Government bears the burden  
8 of proof. *United States v. Martinson*, 809 F.2d 1364, 1369-70 (9th Cir. 1987). In such an  
9 instance, the “person from whom the property is seized is presumed to have a right to its  
10 return, and the government has the burden of demonstrating that it has a legitimate reason  
11 to retain the property.” *Id.*; *see also United States v. Kriesel*, 720 F.3d 1137, 1144 (9th  
12 Cir. 2013) (explaining that a “defendant’s Rule 41(g) motion should presumptively be  
13 granted if the government no longer needs the property for evidence”). The Government  
14 can rebut this presumption “by proving a ‘legitimate reason’ for retaining the property  
15 that is ‘reasonable[] under all of the circumstances.’” *United States v. Gladding*, 775  
16 F.3d 1149, 1152-53 (9th Cir. 2014) (quoting *Kriesel*, 720 F.3d at 1145). Thus, the  
17 Government cannot rest on its mere allegation that the items at issue are stolen  
18 contraband. (*See Resp.* at 2.) Instead, the Government must come forward with evidence  
19 of a legitimate reason for retaining the property to overcome the presumption that the  
20 property is no longer needed for evidentiary purposes and should be returned.

21 The court thus ORDERS the Government to SHOW CAUSE within twenty (20)  
22 days as to why the night vision goggles and olive green tactical bag should not be

1 returned to Mr. Balls. *See United States v. Sperow*, No. 1:06-CR-126-BLW, 2017 WL  
2 1073347, at \*9 (D. Idaho Mar. 20, 2017) (The “Government shall have ten (10) days  
3 from the date of this Order to file a supplemental response . . . identifying any  
4 items . . . of Sperow’s Inventory to which it asserts a continued evidentiary need.”);  
5 *Santos-Pineda v. Axel*, No. CV 10-6285 MMM, 2011 WL 13103995, at \*8 (C.D. Cal.  
6 July 26, 2011), *aff’d*, 621 F. App’x 407 (9th Cir. 2015) (requiring a supplemental report  
7 within ten days). Within ten days of the Government’s response to the court’s order to  
8 show cause, Mr. Balls may file a response to the Government’s submission. Within five  
9 days of Mr. Balls’ filing, if any, the Government may file a reply. The parties’ initial  
10 submissions shall be limited to ten (10) pages. The Government’s reply, if any, shall be  
11 limited to five (5) pages. If either party requests a hearing in its initial filing, the court  
12 will consider conducting a hearing to take any additional testimonial or other evidence  
13 that the parties could not submit with their papers or to hear the oral argument of the  
14 parties. *See United States v. Burum*, 639 F. App’x 503, 504 (9th Cir. 2016) (finding it an  
15 abuse of discretion under Rule 41(g) to not hold an evidentiary hearing when the court  
16 did not resolve “several outstanding factual disputes”).

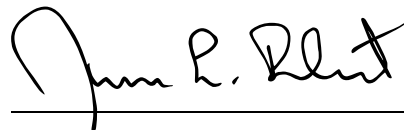
17 If the Government fails to demonstrate a legitimate reason for retaining the  
18 property, the court will order the Government to return the property to Mr. Balls. *See*,  
19 *e.g., Ordonez v. United States*, 680 F.3d 1135, 1137 (9th Cir. 2012) (citing Fed. R. Crim.  
20 P. 41(g)) (“If a motion to return property is granted, ‘the court must return the property to  
21 the movant.’”); *United States v. Wright*, No. 2:14-CR-357-APG-VCF, 2017 WL 811499,  
22 at \*2 (D. Nev. Feb. 9, 2017), *report and recommendation adopted*, No.

1 2:14-CR-357-APG-VCF, 2017 WL 810280 (D. Nev. Feb. 28, 2017) (The “Government  
2 has not articulated a legitimate reason, other than unsubstantiated allegations that the  
3 money to buy the watch came from an unlawful source, why the watch should not be  
4 returned . . . . The Government should be ordered to return to Wright the Technolink  
5 watch.”); *Santos-Pineda*, 2011 WL 13103995, at \*9 (“As the government has failed to  
6 present any evidence or argument that these items constitute contraband or are necessary  
7 for Alonso-Prieto’s case, the court grants petitioners’ motion respecting these items and  
8 orders their immediate return.”).

#### 9 IV. CONCLUSION

10 For the reasons set forth in this order, the court construes Mr. Balls’ Rule 41(g)  
11 motion (Dkt. # 33) as a civil complaint and the Government’s response (Dkt. # 34) as a  
12 motion to dismiss. So construed, the court DENIES the Government’s motion (Dkt.  
13 # 34) and ORDERS the Government to SHOW CAUSE within twenty (20) days of the  
14 entry of this order why it should not return the property to Mr. Balls.

15 Dated this 8th day of May, 2017.

16  
17 

18 JAMES L. ROBART  
19 United States District Judge  
20  
21  
22